

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Nexus Communications, Inc.	:	
	:	
Application for Designation as an Eligible	:	
Telecommunications Carrier for Purposes	:	
of Receiving Federal Universal Service	:	06-0381
Support Pursuant to Section 214(e)(2) of	:	
the Telecommunications Act of 1996.	:	

ORDER

DATED: October 25, 2006

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By the Commission:

I. PROCEDURAL HISTORY; NATURE AND PURPOSE OF FILING

Nexus Communications Inc. ("Nexus") is a telecommunications carrier certificated by the Illinois Commerce Commission ("Commission" or "ICC") to provide resold and local exchange telecommunications services in the service areas of Illinois Bell Telephone Company ("AT&T Illinois") in the State of Illinois.

In the instant proceeding, Nexus filed an Application seeking designation as an Eligible Telecommunications Carrier ("ETC") under Section 214(e)(2) of the Telecommunications Act of 1996, 47 USC § 214(e)(2). Nexus seeks ETC designation for purposes of receiving federal Universal Service Support in order to offer "Lifeline" and "Link-Up" support to its qualifying customers.

Pursuant to due notice, prehearing conferences and hearings were held on various dates. Through their respective counsel, appearances at the hearings were entered by Nexus, by the Staff of the Illinois Commerce Commission ("ICC Staff" or "Staff") and by AT&T Illinois, whose petition for leave to intervene was granted.

Nexus presented the testimony of its President, Steven Fenker. The ICC Staff presented the testimony of Jeffrey H. Hoagg, Principal Policy Adviser of the Telecommunications Division. At the conclusion of the hearings, the record was marked "Heard and Taken." An unopposed draft order was filed by the Staff.

II. BACKGROUND

Nexus was certificated by the ICC as a reseller and facilities-based carrier of telecommunications services on September 11, 2002 in Docket 02-0402; as a prepaid calling service provider in Docket 06-0143; and as a provider of resold interexchange telecommunications and wireless services within the state of Illinois in Docket 06-0144.

Nexus states that it currently contributes to the Universal Service Fund, but is not drawing from the fund since it cannot receive federal universal service funds until it is designated an ETC for those areas it serves in Illinois.

The federal Universal Service fund consists of four programs, each administered by the Universal Service Administrative Company ("USAC"). These programs are: (1) the universal service mechanism for high cost areas, providing financial support to carriers serving high cost areas; (2) the universal service mechanism for schools and libraries (also known as the E-rate program), providing for discounted services (local and long distance telephone service, Internet access, and internal connections) to eligible schools and libraries; (3) the universal service mechanism for low income consumers, assisting low income consumers with discounted installation and monthly telephone services; and (4) the universal service mechanism for rural health care, providing discounted services to rural health care providers.

Nexus avers that the service area for which it is seeking ETC status has not been designated as a high cost area. Nexus commits to limit its requested USF support to the federal USF "low income" support programs. Nexus also certifies that all low income USF funding received will be used to support subsidized rates for its Lifeline and Link-Up customers consistent with 47 CFR §54.403.

III. STATUTORY AUTHORITY; ETC REQUIREMENTS

A. Introduction

As stated above, Nexus seeks designation as an Eligible Telecommunications Carrier for purposes of receiving federal universal service support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996. Section 214(e) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 214(e) (the "Federal Act"), provides in pertinent part as follows:

(e) PROVISION OF UNIVERSAL SERVICE.—

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-

- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

...

(4) RELINQUISHMENT OF UNIVERSAL SERVICE. A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Under Section 214(e) of the Federal Act, a telecommunications carrier may be designated as an ETC and thereby receive universal service support so long as the carrier, throughout its service areas; (a) offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's service (including services offered by another ETC); and (b) advertises the availability of and charges for such services using media of general distribution.

State commissions were granted the ability to designate a common carrier as an ETC, as set forth in Section 214(e)(2) of the Federal Act and implemented through Section 54.201(b) of the FCC's Rules, 47 CFR 54.201(b). Section 54.201(b) states that the Commission shall, on its own motion or upon request, designate a common carrier as an ETC so long as the carrier meets the requirements of Section 54.201(d) of said rules, which restates the requirements found in Section 214(e)(1) of the Federal Act.

Section 214(e)(2) of the Federal Act and Section 54.201(c) of the FCC's Rules, 47 CFR 54.201(c), state that upon request and consistent with the public interest, convenience and necessity, the state Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area the Commission designates, provided each additional requesting carrier satisfies Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's Rules. Before designating an additional ETC for an area served by a rural telephone company, the state Commission shall find that such designation is in the public interest.

Pursuant to Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), the following services and functions are to be offered by an ETC:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

ETCs must also provide Lifeline and Link-Up services and advertise the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for such services. 47 C.F.R. §§54.405; 54.411.

Section 254(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 254(b), defines the "Universal

Service Principles” to guide regulatory bodies in preserving and advancing universal service. Section 254(b) of the Federal Act provides as follows:

(b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.--Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.--Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.--All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.--There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.--Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.--Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

Pursuant to Section 254(b)(7), the FCC adopted the following additional principle regarding competitive neutrality:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. Report and Order in CC Docket No. 96-45, FCC 97-157 Issued May 8, 1997 (¶ 47).

B. FCC's ETC Order

On March 17, 2005, the FCC issued a Report and Order ("FCC ETC Order") clarifying existing requirements, and imposing additional requirements, which the FCC is to use in evaluating applications for ETC designation on a going forward basis. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC-05-46. In Paragraph 1, the FCC referred to these additional guidelines as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that these procedures serve as guidelines for state commissions to follow in their evaluation of ETC applications properly before those commissions. These additional guidelines are codified in 47 CFR §54.202.

State commissions are not bound by the guidelines in the FCC's ETC Order when they evaluate ETC applications. *Id.* at ¶¶58-64.

Generally speaking, the guidelines in Paragraph 20 of the FCC's ETC Order require that the ETC applicant demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.

More specifically, the guidelines in the FCC's ETC Order require the following:

An ETC Applicant shall commit to provide **service throughout its proposed designated service area** to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(i). The FCC explained the requirement more fully in Paragraph 22 of its ETC Order as follows:

[W]e agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. . . . If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately.

In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.

An ETC Applicant shall submit a **five-year plan** that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. 47 CFR §54.202(a)(1)(ii).

The FCC explained the requirement more fully in Paragraph 23 of its ETC Order as follows:

[W]e require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation. Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support.

This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported

services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities.

An ETC Applicant shall demonstrate its ability to **remain functional in emergency situations**. 47 CFR §54.202(a)(2). The FCC explained the requirement more fully in Paragraph 25 of its ETC Order as follows:

Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. We believe that functionality during emergency situations is an important consideration for the public interest.

An ETC Applicant shall demonstrate that it will satisfy applicable **consumer protection** and service quality standards. 47 CFR §54.202(a)(3). The FCC explained the requirement more fully in Paragraphs 28 of its ETC Order as follows:

We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission. We will consider the sufficiency of other commitments on a case-by-case basis. . . . In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.

In Paragraph 31 of its ETC Order, the FCC further stated, "Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with section 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."

An ETC Applicant shall demonstrate that it offers a **local usage plan** comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. FCC ETC Order at Para. 32; 47 CFR §54.202(a)(4).

An ETC Applicant shall certify that the FCC may require it to provide **equal access** to long distance carriers if no other ETC is providing equal access within the service area. FCC ETC Order at Para 35; 47 CFR §54.202(a)(5).

The FCC has imposed certain **reporting** requirements in connection with the annual certification of ETCs. 47 CFR §54.209.

As indicated above, before designating an additional ETC for an area served by a **rural telephone company**, the state Commission must find such designation to be in the **public interest**, 47 U.S.C. Section 214(e)(2). In its ETC Order, Paragraph 40, the FCC clarified the public interest analysis for ETC designations by adopting the fact-specific public interest analysis developed in prior orders.

The FCC acknowledged that Congress did not establish specific criteria to be applied under the public interest test. The FCC stated that the public interest benefits of a particular ETC designation must be analyzed in a manner that is: (1) consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; (2) ensuring the availability of quality telecommunications services at just reasonable and affordable rates; and (3) promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.

In cases before it, the FCC stated that it would first consider a variety of factors in the overall ETC determination, including an examination of the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC said it will also conduct a "creamskimming" analysis that compares the population density of each such wire center in which the ETC applicant seeks designation against that of all wire centers in the study area in which the ETC applicant does not seek designation. FCC ETC Order at Para 41; 47 CFR §54.202(c)

The FCC declined to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund, but it did identify the level of federal high-cost per-line support in a given wire center as one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in that wire center. ETC Order at Para 54-55.

It is clear from the FCC's ETC Order that the burden of proof rests with the ETC applicant. With respect to the public interest evaluation, the FCC stated, in paragraph 44, "In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant."

The FCC stated its belief that Section 214(e)(2) "demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law." The FCC noted, in paragraph 61, that states "are particularly well-equipped to determine their own ETC eligibility requirements."

In addition, the ETC Order recognizes, in paragraph 72, that “state commissions possess the authority to revoke ETC designations for failure of an ETC to comply with the requirement of section 214(e) of the Act or any other conditions imposed by the state.”

C. Parties’ Positions

Staff witness Mr. Hoagg testified that the FCC requirements are, for the most part, appropriate and reasonable, and that the Commission should, in large measure, apply requirements similar to those set forth in the FCC’s ETC Order. (Staff Exhibit 1.0 at 4-5) Even if the FCC had not issued its ETC Order, Staff believes it would be appropriate for the Commission to apply standards and requirements similar to those set forth in the ETC Order. In addition to these requirements, Staff also recommends that the Commission require an applicant to certify that it has, can and will comply with all applicable ICC Code Parts as a condition for ETC designation.

Nexus, in the reply testimony of Mr. Fenker, provided evidence and commitments intended to demonstrate its intent and ability to comply with federal requirements, the conditions set forth in the FCC’s ETC Order, and applicable Commission Code Parts.

D. Commission Conclusions

First, the Commission finds that in evaluating Nexus’ proposal for ETC designation, the minimum requirements to be met are the statutory federal guidelines identified above.

Consistent with its determinations made in consolidated Dockets 04-0454, 04-0455 and 04-0456, and in Docket 06-0003, the Commission also finds that the FCC’s ETC Order, while not binding on the Commission, does provide an appropriate analytical framework for considering ETC designation and for establishing whether Nexus has shown its application is in the public interest. Furthermore, Nexus, as the applicant for ETC designation, bears the burden of proof to show it has satisfied each of the elements required for ETC designation and that such designation is in the public interest.

IV. NEXUS’ PROPOSED ETC SERVICE AREAS

Section 54.207 of the FCC’s rules defines a “service area” as a “geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms.” 47 C.F.R. § 54.207(a). According to the parties, for service areas served by non-rural ILECs, there are no restrictions on how a Commission defines the “service area” for purposes of designating a competitive ETC.

Nexus proposes a service area consisting of each of the non-rural AT&T Illinois wire centers in Illinois designated in Attachment A to the Application. No party provided evidence or argument in opposition to Nexus’ proposed service area designation.

V. EVIDENCE REGARDING ETC REQUIREMENTS

A. Requirement to Provide USF Supported Services

1. Evidence Presented

As noted above, Section 214(e)(1)(A) of the Federal Act provides that an ETC shall, throughout the designated service area, “offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services including the services offered by another eligible telecommunications carrier.”

Section 54.101(a) of the FCC’s rules, 47 CFR 54.101(a), identifies nine services and functions that are supported by federal universal support mechanisms and are to be offered by an ETC. Nexus provided evidence regarding the services provided by Nexus as they relate to the nine supported services and functions. (Nexus Ex. 1 at 12-13)

The first function identified in Section 54.101(a) is **voice-grade access to the public switched network**. “Voice grade access” is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.

For the purposes of this function, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz. According to Nexus, it is able to originate and terminate telephone service for all of its subscribers through interconnection with AT&T Illinois, and all customers are able to place and receive calls on the public switched network within the specified bandwidth. (Nexus Ex. 1 at 12)

Through interconnection with incumbent local exchange carriers, Nexus says it is able to originate and terminate telephone service for all of its subscribers, and that all customers are able to place and receive calls on the public switched network within the specified bandwidth. (Nexus Ex. 1 at 12)

The second service is identified as **local usage**. The parties state that “local usage” means an amount of minutes of use of exchange service, prescribed by the FCC, provided free of charge to end users. The FCC has not quantified any minimum amount of local usage required to be included in a universal service offering. Nexus’ service includes local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges. Nexus’ residential plans offer unlimited local usage.

ETC applicants such as Nexus must offer rate plans and local usage comparable to the service plans offered by the incumbent LEC in the area. The issue of comparable service is addressed in Subsection V.G below.

The third service is **Dual Tone Multi-frequency Signaling** or its Functional Equivalent. Dual tone multi-frequency signaling ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time. Nexus asserts that it provides touchtone dialing service fulfilling the DTMF requirement. (Nexus Ex. 1 at 12)

The fourth service is "**single-party service.**" "Single-party service" is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed or, in the case of wireless telecommunications carriers which use spectrum shared among users, a dedicated message path is provided for the length of a user's particular transmission. Nexus states that it provides a dedicated message path for the entire length of customer calls, and no party took issue with Nexus' evidence regarding this supported service.

The fifth supported service is **access to emergency service** through the dialing of "9-1-1," and includes access to services, such as 9-1-1 and enhanced 9-1-1, to the extent the local government or other public safety organization in the eligible carrier's area has implemented such service. 9-1-1 is defined as a service that permits a telecommunications user, by dialing the three-digit code "9-1-1," to call emergency services through a Public Safety Answering Point ("PSAP") operated by the local government. "Enhanced 9-1-1" is defined as 9-1-1 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party.

Nexus asserts that through its interconnection with AT&T Illinois, customers have access to 9-1-1 services, and all 9-1-1 traffic is handled in accordance with the 83 Illinois Administrative Code 725 and the Emergency Telephone System Act. Nexus states that it has an established working relationship with the 9-1-1 systems when providing local telephone service, and has coordinated with AT&T Illinois and local 9-1-1 systems to provide transparent service for our local exchange customers. (Nexus Ex. 1 at 13) No party offered took issue with Nexus' evidence regarding this supported service.

The sixth USF supported service is **access to operator services**, defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call.

Nexus currently offers its subscribers access to operator services for the placement and billing of telephone calls, including collect calls, calling card calls, credit card calls, person-to-person calls, and third party calls. Customers may also obtain related information throughout Nexus' requested designated ETC service area. Other parties offered no opposition to Nexus' evidence regarding this supported service.

The seventh supported service is **access to interexchange service**, defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. Nexus says it provides all its customers the ability to make and receive interexchange or toll calls through the interconnection arrangement with AT&T Illinois. (Nexus Ex. 1 at 13) No party took issue with this evidence.

The eighth service is **access to directory service**, defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. Nexus claims it provides all its customers with access to information contained in directory listings by dialing "4-1-1" or "555-1212." No party took issue with this evidence.

The final supported service is **toll limitation for qualifying low-income customers**. Under FCC Rules, ETCs must offer "Toll Limitation," a term the FCC has defined to include either "Toll Blocking" or "Toll Control," but it does not at this time require both, to qualifying Lifeline and Link-Up universal service customers at no charge.

Toll Blocking allows customers to block the completion of outgoing toll calls. Toll Control allows the customer to limit the dollar amount of toll charges a subscriber can incur during a billing period. Nexus asserts that it provides qualifying Lifeline and Link-Up customers with access to toll limitation.

2. Commission Conclusion

As noted above, the FCC has identified nine services and functions that are supported by federal universal support mechanisms and are to be offered by an ETC. Evidence regarding Nexus' willingness and ability to provide these services is summarized above.

Having reviewed the record, the Commission finds that subject to the commitments made by Nexus, and the conditions set forth herein, Nexus offers and has the capability to provide each of the nine supported services in each of the wire centers for which it seeks ETC status through the use of facilities leased from AT&T Illinois.

B. Advertising of Availability of Services

As noted above, Section 214(e)(1)(B) of the Federal Act of 1996 provides that an ETC shall, throughout the designated service area, "advertise the availability of such services and the charges therefor using media of general distribution." Parts 54.405 and 54.411 provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service."

Nexus commits to advertising the availability and terms of its services in conformance with all applicable Commission rules. Likewise, with regard to the advertising of the availability of Lifeline and Link-up services, Nexus represents that it will advertise the availability of those services in conformance with the requirements of 83 Illinois Administrative Code Part 757. (Nexus Ex. 1 at 14-15)

No party took issue with Nexus with regard to the above commitments and the Commission has reviewed the record on these issues. With respect to advertising the availability of the supported services within the meaning of Section 214(e)(1)(B) of the 1996 Act, the Commission finds that Nexus has shown that it will “advertise the availability of such services and the charges therefor using media of general distribution.”

With regard to lifeline service, the Commission concludes that Nexus has satisfied the requirement of CFR §54.405 to make available lifeline service, as defined in §54.401, to qualifying low-income consumers, and to publicize the availability of such service in a manner reasonably designed to reach those likely to qualify for the service.

The Commission also concludes that Nexus has satisfied the requirement of CFR §54.411 to make Link-Up services available as part of its obligation set forth in CFR §54.101(a)(9) and 54.101(b).

Finally, the Commission concludes that the commitments made by Nexus on the above issues shall be added to the list of conditions being imposed in this Order.

C. Commitment to Provide Service throughout ETC-Designated Area

As noted above, under FCC guidelines, an ETC Applicant must commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. FCC ETC Order at Para 22; 47 CFR §54.202(a)(1)(i).

Nexus committed to provide service throughout its proposed ETC-designated service area to all customers. (Nexus Ex. 1 at 16) No party took exception to Nexus’ evidence in that regard.

The Commission concludes that Nexus presented sufficient evidence regarding its willingness and ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service. The Commission finds that this requirement shall be added to the list of conditions being imposed in this Order.

D. Five-Year Network Improvement Plan

1. Introduction

As explained above, under FCC guidelines, an ETC Applicant must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. ETC Order at Para 23; 47 CFR §54.202(a)(1)(ii).

Generally, the FCC requires that the five-year network improvement plan submitted to the FCC specifically describe proposed improvements or upgrades "on a wire center-by-wire center basis throughout its designated service area." The FCC recommended that state commissions apply a similar approach, but did not require absolute uniformity, stating that its approach accounts for "unique circumstances" and "allows consideration of fact-specific circumstances of the carrier and the designated service area." FCC ETC Order at Para 23-24.

2. Evidence Presented

Staff witness Mr. Hoagg observed that only one circumstance warrants deviation from the general requirement that a detailed individual spending plan be submitted by an ETC applicant. That exception is for an applicant whose requested ETC serving territory would qualify it to receive no "high cost" USF support, but only "low income" USF support. (Staff Ex. 1.0 at 12-13) He explained that this situation occurs where the new ETC's requested service territory is the territory of an incumbent LEC that itself receives only low income USF support.

Since Nexus seeks ETC status only for AT&T Illinois' service areas, Staff says Nexus could satisfy the multi-year spending plan requirement by confirming that all USF monies received could be used to support the provision of Lifeline and Linkup services, and by certifying the following:

- i) that all "low income" USF funding received would be used to support subsidized rates for Lifeline and Link-Up customers;
- ii) that it would timely notify the ICC (within 3 weeks) of any future change that would render NEXUS eligible to receive USF "high cost" support; and
- iii) that in the event of any such future change, it would timely file (within 6 weeks) a revised 5-year spending plan to account for appropriate use of all "high cost" USF support received.

Staff further recommended that the failure of Nexus to meet these criteria, or the failure to satisfy any other applicable requirements, result in the revocation of Nexus' ETC designation upon proper notice and hearing. (Staff Exhibit 1.0 at 13)

On page 25 of its reply testimony, Nexus Exhibit 1, Nexus committed to the following conditions, in lieu of providing a comprehensive five-year network investment plan at this time:

- a. All “low income” USF funding received will be used to support subsidized rates for Lifeline and Link-Up customers;
- b. Nexus will provide written notification to the Staff of the ICC within 2 weeks of any change and/or circumstance that would render Nexus eligible to receive USF “high cost” support; and
- c. In the event of any such change and/or circumstance; Nexus will file with the Commission, within 6 weeks of said change a revised 5 year-spending plan to account for appropriate use of all “High Cost” USF support received.

3. Commission Conclusion

Under FCC guidelines, an ETC Applicant must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant’s network on a wire center-by-wire center basis throughout its proposed designated service area. As observed by Staff, the only circumstance warranting deviation from this requirement is where an applicant’s requested ETC serving territory would qualify it to receive no “high cost” USF support, but only “low income” USF support.

Because Nexus is requesting a designated service area in which high cost support is not currently available, and seeks ETC designation solely for purposes of reimbursement for provision of subsidized Lifeline and Link-Up services to eligible customers, the Commission agrees with the parties that submission of a Five-Year Network Improvement Plan is not required at this time.

Nexus shall report annually the amount of USF funding received. Nexus also shall report annually the amount of subsidization provided to Lifeline and Link-Up customers. This information is intended to provide the Commission with an accurate accounting of the receipts and disbursements of federal USF support by Nexus. Should circumstances change such that Nexus becomes eligible to receive high cost support, it shall abide by the multi-year network improvement plan requirement. The Commission finds that commitments detailed here are sufficient and shall be included in the list of conditions imposed in this Order.

E. Ability to Remain Functional in Emergency Situations

As explained above, under FCC guidelines, an ETC Applicant must demonstrate its ability to remain functional in emergency situations. 47 CFR §54.202(a)(2); FCC ETC Order at Para 25.

According to Nexus, providing service to its customers through the use of AT&T Illinois leased facilities allows Nexus to provide to its customers the same ability to remain functional in emergency situations as currently provided by the ILECs to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, rerouting of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. (Nexus Ex. 1 at 17)

No party questioned Nexus' assertion that it will provide its customers the same ability to remain functional in emergency situations as is currently provided by the ILEC to its own customers. The Commission concludes that Nexus has made the necessary showing on this issue.

F. Consumer Protection and Service Quality Standards

Under FCC guidelines, an ETC Applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3); FCC ETC Order at Para 28.

Nexus provided evidence intended to show that it will satisfy all such standards. As part of its certification requirements for local and interexchange services, Nexus must abide by the service quality and consumer protection rules set forth in Code Parts 730, 731, 732, and 735. Nexus was granted a waiver on Part 735.180, regarding the publication of directories. Nexus asserts that it complies with the "slamming" and "cramming" requirements found in Sections 13-902 and 13-903 of the PUA. In addition, Nexus commits to reporting information on consumer complaints per 1,000 lines on an annual basis consistent with the FCC's ETC Order. (Nexus Ex. 1 at 18) No party took issue with Nexus' evidence that it will satisfy applicable consumer protection and service quality standards.

Having reviewed the record, the Commission concludes that Nexus has shown it will satisfy applicable consumer protection and service quality standards as required by FCC guidelines. This finding is conditioned on Nexus' continuing compliance with the commitments it made in its certification dockets and in the record of this proceeding. These standards are the ones that Nexus shall meet or exceed.

G. Local Usage/Rate Plans

As indicated above, under FCC guidelines, an ETC Applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. FCC ETC Order at Para 32; 47 CFR §54.202(a)(4).

Nexus presented evidence purportedly demonstrating that it offers local usage plans comparable to the service plans offered by the incumbent LEC, AT&T Illinois. Nexus offers its Basic Plan that includes unlimited local calling and eight vertical

features for 27.99/month. Nexus says this offering is comparable to AT&T Illinois' Flat Rate Package, which provides unlimited local toll and two vertical features that ranges in price from \$19.10 to \$23.50.

Nexus also offers a plan that includes unlimited local calling, unlimited local toll calling, 600 minutes of long distance, and eight vertical features for \$48.95/month. Nexus says this offering is comparable to AT&T Illinois' Enhanced Flat Rate Package that ranges in price from \$53.79 to \$56.79.

Nexus asserts that, in terms of comparability, its local calling packages are offered to all who apply for service regardless of past credit history, which tends to lead to a very large churn and default rate. Consequently, the cost of doing business may be higher for Nexus than for the incumbent. In addition, Nexus commits to continue to offer a local usage plan comparable to that offered by the incumbent LEC. No party questioned Nexus' assertion that its rates are comparable to that of the incumbent.

Having reviewed the record, including Nexus' commitment noted above, the Commission finds that Nexus' local usage and rate plans meet the requirement that it offer comparable local usage and rate plans.

H. Carrier of Last Resort - Equal Access Requirement

Under FCC guidelines, an ETC Applicant shall certify its acknowledgement that the FCC may require it "to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area." FCC ETC Order at Para 35; 47 CFR §54.202(a)(5).

Nexus acknowledges that it may be required to provide equal access to long distance carriers to all its customers in its designated service area, and will abide by such a requirement. (Nexus Ex. 1 at 20) No party provided evidence or argument in opposition to Nexus' position regarding this commitment.

Having reviewed the record, the Commission finds that the acknowledgement and commitments made on the record by Nexus are sufficient to satisfy the subject requirements for purposes of this proceeding.

I. Annual Reporting and Certification Requirements

In paragraph 69 of its ETC Order, and in 47 CFR 54.209, the FCC has identified certain annual reporting requirements in connection with the annual certification of ETCs as follows:

- (1) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality,

coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) the number of complaints per 1,000 handsets or lines;

(5) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(6) certification that the ETC is able to function in emergency situations;

(7) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

Nexus has committed to comply with all of the applicable annual reporting requirements that are required of it as a recipient of low-cost support, and has committed to provide a five-year spending plan (reporting requirement 1 from 47 CFR 54.209) in the event it becomes eligible for high cost support. (Nexus Ex. 1 at 21-22) No party took issue with Nexus on this issue.

Having reviewed the record, the Commission concludes that Nexus must file reports and certifications with the Commission on an annual basis, consistent with Nexus' commitment, as described above.

VI. PUBLIC INTEREST ANALYSIS

A. Introduction

In its ETC Order, the FCC encouraged state commissions to implement the FCC's framework for analyzing the public interest so as promote a consistent approach among the states in applying the universal service principles of preserving and advancing universal service and competitive neutrality, and improving the long-term sustainability of the USF. FCC ETC Order at Para 19, 58.

The FCC acknowledged that state commissions may use and have used additional factors in their public interest analysis. The burden of proving whether an Applicant's service is in the public interest is on the Applicant. Finally, the FCC stressed that although it has set forth criteria for evaluating public interest, it and state commissions may conduct the analysis differently, or reach a different outcome, depending on the area being served by the Applicant. *Id.* at Para 40, 43-44, 60.

The FCC indicated that it would continue to balance the following factors in performing its public interest analysis for ETC applicants:

- (1) **Consumer Choice:** The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.
- (2) **Advantages and Disadvantages of Particular Service Offering:** The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines disadvantages such as dropped call rates and poor coverage.

In addition to the balancing of the foregoing factors, the FCC conducts a "creamskimming" analysis in areas for which an applicant seeks designation below the study area level of a rural telephone company. The FCC compares the population

density of each wire center in which the ETC applicant seeks designation to that of the wire centers in the study area in which the ETC applicant does not seek designation. FCC ETC Order at Para 41.

The FCC also suggests that a state commission may consider limiting the number of ETCs due to the strain on the federal USF by examining per-line USF support received by the individual LEC, on a case-by-case approach. The FCC, however, declined to adopt a specific national per-line support benchmark to be applied in analyzing the strain on the federal USF. *Id.* at Para 55-56.

B. Positions of Parties

Staff urges the Commission to find that Section 214(e)(2) requires a “public interest” test for non-rural, as well as rural areas, and that the public interest test may differ depending on whether the area served is rural or non-rural. (Staff Ex. 1.0 at 5-6 and 17-18) Staff contends that the burden to demonstrate that an ETC designation would serve the public interest clearly rests with the Applicant seeking ETC designation. Moreover, Staff recommends that all explicit requirements of the ETC Order should be satisfied for a “positive” public interest finding. Finally, Staff noted that the standards applied by the Commission to determine whether granting an ETC Application is in the public interest may be determined broadly at the Commission’s discretion, consistent with Section 214(e) of the federal Act, and other applicable state and federal law.

Nexus claims it has demonstrated that it meets all of the requirements set forth in the FCC’s ETC Order, as recommended by Staff. Further, Nexus argues that granting its ETC application would serve the public interest by increasing customer choice for eligible low income consumers, and by promoting further deployment of its local exchange offerings. Nexus asserts that it offers quality services at affordable prices, and will offer services to low income customers who might not otherwise have such services available. Nexus contends that the commitments it would abide by as part of an ETC designation help ensure that such designation would be in the public interest. (Nexus Ex. 1 at 8-9) No party raised objections to Nexus’ position regarding whether it meets the public interest test.

An additional element of the FCC’s public interest assessment includes a “cream skimming” analysis if the ETC applicant is seeking designation below the study area level of a rural telephone company. ETC Order at ¶41. Nexus does not seek designation below the study area level of a rural telephone company, and therefore, Nexus asserts, no “cream skimming” analysis is required. No party took issue with Nexus’ position on this issue.

C. Commission Conclusions

The Commission has been given broad discretion in analyzing whether the designation of additional carrier as an eligible telecommunications carrier in a given

area, thereby allowing the carrier to seek Universal Service funding support, is in the public interest.

In this regard, the parties and Staff have agreed, and the Commission concurs, that the federal guidelines as described in the FCC's ETC Order should be the minimum guidelines applied in this proceeding.

As indicated by the parties and discussed above, a public interest analysis in the context of ETC applications involves the balancing of a number of factors, described by Staff witness Mr. Hoagg as a cost-benefit analysis, largely qualitative in nature. (Staff Ex. 1.0 at 17-18)

One such factor in the analysis is the benefit of increased customer choice, although that value alone is unlikely to satisfy the public interest test. In the instant proceeding, the designation of Nexus as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested.

Another factor for consideration is the advantages and disadvantages of the particular service offering. In that regard, Nexus' offering is intended to provide additional rate plan options for low income customers, and increased access to emergency services for the public overall to the extent that additional low income customers are enabled to obtain service.

Also, the specific commitments made by Nexus regarding compliance with the federal guidelines described in the FCC's ETC order, and specifically with Staff's tailoring of those guidelines to fit both the Commission's existing rules and precedents, support a public interest finding.

As noted above, as part of the public interest assessment in this docket, no creamskimming analyses were performed. Such an analysis is relevant where a competitive ETC seeks to include only a portion of the study area of a rural ILEC in its ETC service area. The concern is that a competitive ETC may be providing service to only the lower-cost portion of the ILEC study area while receiving support based upon an overall higher average cost that is spread across the entire LEC study area.

Creamskimming arises when an ETC seeks designation in a disproportionate share of high-density wire centers in an incumbent LEC's rural service area. A creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. In the instant docket, Nexus only seeks ETC designation in non-rural areas; therefore, no "cream skimming" analysis is required.

VII. OVERALL CONCLUSIONS

As explained above, the Commission has found that the requirements in Section 214(e) of the Federal Act of 1996 and the FCC's ETC Order and rules provide

appropriate minimum guidelines for this Commission in evaluating the ETC applications in this proceeding.

In view of the determinations on the issues made above, which will not be repeated here, and subject to the commitments and conditions found appropriate herein, the Commission finds that Nexus has made the necessary showings contemplated in Section 214(e) and the FCC's ETC Order and rules. All "low income" USF funding received by Nexus will be used to support subsidized rates for its Lifeline and Link-Up customers. Moreover, Nexus has committed to comply with all applicable Illinois Commerce Commission requirements. Accordingly, Nexus should be designated as an eligible telecommunications carrier in the requested study area for purposes of receiving federal "low-income" Universal Service Fund support, subject to the conditions imposed below.

The Commission also observes that the findings herein are based on the record in this proceeding, and in large part are reflective of the eventual concurrence of the parties on ultimate conclusions. As such, the findings are not intended to create any presumptions with respect to any future application for designation as an ETC.

VIII. COMMITMENTS AND CONDITIONS

Nexus has made a number of commitments that are discussed in this Order and are listed below. Staff recommends that these commitments be made conditions to the Order.

The Commission concludes that the commitments set forth below are necessary and appropriate conditions with which Nexus must comply with respect to its designation as eligible telecommunications carrier. That is, these are conditions Nexus must satisfy to be eligible for ETC status. Accordingly, the Commission adopts each of the following commitments as conditions to this Order and to the ETC designation granted to the Applicant.

1. All "low income" USF funding received will be used only to support subsidized rates for Nexus' Lifeline and Link-Up customers, and Nexus shall certify this use annually.
2. Nexus shall notify the ICC within three weeks of any future change that would render it eligible to receive USF "high cost" support.
3. Nexus shall file an appropriate revised five-year spending plan to account for appropriate use of all "high cost" USF support received. Nexus commits to filing this plan within six weeks after notifying the Commission of any change that would render it eligible to receive USF "high cost" support.

4. Nexus shall advertise to the public in its ETC-designated area the fact that it is offering the supported universal services and the charges for those services and the charges for those services in local circulation newspapers in each Applicant's serving areas. Nexus shall also advertise to the public the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for such services, and in compliance with the requirements of 83 Illinois Administrative Code 757.

5. Nexus acknowledges it may be required to provide Lifeline subscribers "equal access" to interexchange carriers of their choice.

6. Nexus shall abide by its commitment to provide service throughout its ETC-designated service area to all customers who make a reasonable request for service, including all qualifying low-income customers.

7. Nexus will comply with all applicable statutes and rules affecting ETC status and obligations thereunder.

8. Nexus will comply with all annual reporting and certification requirements as set forth herein.

9. Should Nexus fail to abide by any of these commitments, the Commission may, upon proper notice and hearing, revoke Nexus' designation as an ETC.

IX. FINDINGS AND ORDERING PARAGRAPHS

The Commission, after reviewing the record herein, is of the opinion and finds that:

- (1) Nexus Communications Inc. is a provider of local and interexchange services in Illinois;
- (2) the Commission has jurisdiction over Nexus and the subject matter of this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the conditions found appropriate in this Order are hereby imposed with respect to the ETC designation to be granted herein, and the granting of such designation is subject to compliance with those conditions;
- (5) Nexus shall be designated as an Eligible Telecommunications Carrier for purposes of receiving federal low-income Lifeline and Link-Up Universal Service support from the Federal Universal Service Fund with respect to

the requested ETC service area, which consists of the AT&T Illinois incumbent non-rural service areas in Illinois.

IT IS THEREFORE ORDERED that Nexus Communications Inc. is hereby designated, effective as of the date of this Order, as an Eligible Telecommunications Carrier for purposes of receiving federal low-income Lifeline and Link-Up Universal Service support from the Federal Universal Service Fund with respect to the requested ETC service area, which consists of the AT&T Illinois incumbent non-rural service areas in Illinois.

IT IS FURTHER ORDERED that Nexus shall comply with the conditions set forth in Section VIII of this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 25th day of October, 2006.

(SIGNED) CHARLES E. BOX

Chairman